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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,834	03/17/2004	Ben Meager	3772-7-CON	6460
22442	7590	10/25/2004	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			SAKRAN, VICTOR N	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,834

Applicant(s)

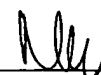
MEAGER, BEN

Examiner

VICTOR N SAKRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/17/04 and 6/7/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 25, is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman U. S. Patent No. 3,259,951.

Zimmerman discloses Applicant's claimed combination of a slide fastener forming a seal closure comprising an upper seal member (6) having a first mating surface defining rib-like projections (21) and a wing member (16), a lower seal member (7) having a second mating surface and a groove-type recess formed at

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the bottom of the lower seal member (7), said first and second mating surfaces are adapted to interlock with one another, and a slider (5) provided with a rib or projection formed at the open end of said slider and adapted to slidably cooperate with the wing member (16) of the upper seal member (6), and a closure member (bar) formed with said slider and adapted to slidably cooperate with the groove-type recess which is formed in the bottom of the lower seal member (7), wherein said slider comprising a body having a closing end (43) and an opening end (47) wherein, said rib or projection is in opening proximity with the closure member (bar) of the slider, such that when the slider moved in a closing direction causing the upper and lower seal members to pass within the slider from an open position to a closed position and for securing the first and second mating surfaces within the slider in order to create a seal; see Figures 1-5; column 1, lines 45-52; column 2, lines 66-71; column 3, lines 44-47, 54-66, 73-75; column 4, lines 3-17; claims 1 and 2.

Moreover, the particular location and/or the arrangement selected of an elements is considered to be no more than an obvious matter of design choice to one having ordinary skill within the art, especially, since it has been held that rearranging pa an invention is involves only routine skill in the art. See *In Re Japikse*, 86 USPQ 70.

Furthermore, the particular shape of the various elements is also considered to be no more than a matter of design choice obvious to one having ordinary skill within the art at the time the invention was made, especially, since it has been

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held that the particular change in shape of an element in a prior art device is such a change considered no more than an obvious matter of design choice to one having ordinary skill within in the art. See *In Re Dailey*, 357 F. 2d 669, 149 USPQ 47 (CCPA 1954).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 25, rejected under the judicially created doctrine of double patenting over claim 1, of U. S. Patent No. 6,721,999, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. Because a perusal of the instant claims clearly indicates that the subject matter thereof is fully disclosed by the claims of said patent and/or that portion of the

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patent disclosure, which provides support for such claims. See *In Re Vogel*, 422 F. 2d. 438; 164 USPQ 619 (CCPA 1970). Therefore, it is axiomatic that the instant claim is nothing more than an obvious variation of the invention (s) disclosed and claimed in said patent and cannot properly issue in the absence of a Terminal Disclaimer. Furthermore, it is also clear that the invention could have included the instant claims in said patent and that if the instant application were to issue without Terminal Disclaimer, protection of the previously patented invention (s) would be improperly extended until the expiration of the instant claim since the utilization of such invention (s) would infringe the instant claims.

Furthermore, the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

A device for creating a seal comprising an upper seal member having a first mating surface and a lifting wing, a lower seal member having a second mating surface and a closure bar groove, said first and second mating surfaces are adapted to interlock with one another, and a slider having a lifting rib slidably cooperate with the lifting wing of the upper seal member, and a closure bar slidably cooperate with the closure bar groove of the lower seal member, a body having a closing end and an opening end such that, when the slider moved in a direction causing the upper and lower seal members to pass within the slider from the opening end to the closing end, and for securing the first and second mating surfaces within the slider for creating a seal;

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Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

A TERMINAL DISCLAIMER MUST BE SUBMITTED TO THE U. S. PATENT OFFICE, BEFORE THE ALLOWANCE OF THIS APPLICATION.

Claims 1-24 have been canceled by the preliminary amendment filed March 17, 2004.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the prior art of record, as showing structure related to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 20, 2004


VICTOR N SAKRAN
Primary Examiner
Art Unit 3677